

FILED



1:09 pm, 2/28/22

Margaret Botkins  
Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

SHELTA RAMBUR, *et al.*, and others  
similarly situated,<sup>1</sup>

Plaintiffs,

vs.

GOVERNOR GORDON in his official  
capacity, *et al.*,

Defendants.

Case No. 21-CV-201-F

ORDER ON MOTIONS TO DISMISS SECOND AMENDED COMPLAINT

The Court has before it motions to dismiss Plaintiffs' Second Amended Complaint ("SAC," ECF No. 54), filed by all current Defendants who have appeared.<sup>2</sup> All of the motions to dismiss were filed on February 10, 2022. Under Local Rule 7.1(b)(2)(A), Plaintiffs' responses were due February 24, 2022, and to date, none have been filed.

The Court has previously noted in prior orders that it has discretion to deem motions confessed if Plaintiffs did not timely file a response. Local Rule 7.1(b)(2)(A). When

<sup>1</sup> The SAC drops certain named Plaintiffs and Defendants. The Clerk's office shall amend the caption to reflect the above.

<sup>2</sup> The motions are: ECF No. 55 (Superintendent Scott Stults and the Board of Trustees of Sheridan County School District No. 2); ECF No. 57 (Superintendent Ryan Kramer and the Trustees of Goshen County School District No. 1); ECF No. 60 (Wyoming Department of Health, Department of Health Interim Director Stefan Johansson, Wyoming State Health Officer Alexia Harrist, M.D., the "State Defendants"); ECF No. 62 (Superintendent Jubal Yennie and the Trustees of Albany County School District No. 1); ECF No. 63 (Superintendent Dr. Margaret Crespo and the Trustees of Laramie County School District No. 1); ECF No. 65 (Superintendent Craig Barringer and the Board of Trustees of Sweetwater County School District No. 2); ECF No. 67 (Intervenor-Defendant Families for Healthy Communities); ECF No. 70 (State Defendants' motion to grant their motion to dismiss, No. 60).

Plaintiffs failed to timely respond to the motions to dismiss the first amended complaint, the Court put Plaintiffs on notice that if they again failed to timely respond to any motions, the Court would not hesitate to deem such motions confessed. Accordingly, in the Court's discretion provided by Local Rule 7.1(b)(2)(A), all pending motions to dismiss are deemed confessed.

However, the Court will not dismiss this action with prejudice, as the State Defendants request in their most recent motion. To dismiss with prejudice for failure to timely file a response – which is in the nature of a sanction – the Court must first analyze “1) the degree of actual prejudice to the defendant[s]; 2) the amount of interference with the judicial process; [and] 3) the culpability of the litigant. [O]nly when these aggravating factors outweighed the judicial system's strong predisposition to resolve cases on their merits is outright dismissal with prejudice an appropriate sanction.” *Murray v. Archambo*, 132 F.3d 609, 611 (10th Cir. 1998) (internal citation and quotation marks omitted).

As Plaintiffs' response was only due two business days ago, it would be difficult to say that their delay has significantly prejudiced the Defendants or significantly interfered with the judicial process. Considering this is the second time that Plaintiffs have failed to timely respond to several motions to dismiss, despite this Court's orders reminding them of the briefing deadlines of Local Rule 7.1 and warning that the Court would consider future motions deemed confessed for lack of timely response, their culpability would seem high. But overall, the circumstances do not justify the sanction of dismissal with prejudice.

Accordingly, the motions to dismiss are GRANTED. The State Defendants' motion ECF No. 70 is GRANTED IN PART and DENIED IN PART. All claims against

Defendants Superintendent Scott Stults and the Board of Trustees of Sheridan County School District No. 2; Superintendent Ryan Kramer and the Trustees of Goshen County School District No. 1; Wyoming Department of Health, Department of Health Interim Director Stefan Johansson, Wyoming State Health Officer Alexia Harrist, M.D.; Superintendent Jubal Yennie and the Trustees of Albany County School District No. 1; Superintendent Dr. Margaret Crespo and the Trustees of Laramie County School District No. 1; Superintendent Craig Barringer and the Board of Trustees of Sweetwater County School District No. 2; and the Intervenor-Defendant Families for Healthy Communities are DISMISSED WITHOUT PREJUDICE.


As for the Defendants named in the SAC but who have not yet appeared (Governor Gordon; Superintendent Kent Stokes and the Trustees of Uinta County School District No. 4; and county health officers Jean Allais, M.D., Mark Schueler, M.D., Stanley Hartman, M.D., Ted Church, M.D., and Jean Stachon, M.D.), the docket does not appear to reflect returns or waivers of service from these Defendants. The Court reminds Plaintiffs that except as provided in Rule 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).

Governor Gordon and the county health officers have been named as defendants since Plaintiffs filed the original complaint on November 2, 2021. The 90-day deadline for service to them passed on January 31, 2022. If Plaintiffs do not file a return or waiver of

service as to each of those Defendants by **March 7, 2022**, the claims against them will be dismissed without prejudice without further notice.

The Uinta County School District No. 4 Defendants were first named as Defendants in the SAC filed January 27, 2022. To assist the Court in scheduling this case, Plaintiffs shall file a return or waiver of service, or a status report, regarding the Uinta County School District No. 4 Defendants by **March 7, 2022**. Should the case reach 90 days from January 27, 2022, without a return or waiver of service being filed with respect to those Defendants, the claims against them will be subject to dismissal without prejudice without further notice from the Court.

Dated this 28th day of February, 2022.

  
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NANCY D. FREUDENTHAL  
UNITED STATES DISTRICT JUDGE